

# Exhibit E2

3/26/07

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GEORGE SANTOLI and STACEY SANTOLI,

plaintiffs,

Index No.: 118596/03

- against -

475 NINTH AVENUE ASSOCIATES, LLC,  
VJB CONSTRUCTION 475 9TH AVENUE LLC,  
VJB CONSTRUCTION CORP., SPIELER & RICCA  
ELECTRICAL CO. INC. and KAJIMA DEVELOPMENT  
CORPORATION,

VERIFIED ANSWER,  
AFFIRMATIVE DEFENSES,  
AND CROSS-CLAIMS

defendants.  
-----X

Defendant, VJB CONSTRUCTION CORP. ("VJB"), by and through their attorneys RYAN, DEVEREAUX & CONLON, LLP, 39 Broadway, Suite 910, New York, New York 10006, as and for their answer and affirmative defenses to the plaintiffs' amended verified complaint and for their cross-claims avers as follows:

1. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 1 of the complaint.
2. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 2 of the complaint.
3. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 3 of the complaint.
4. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 4 of the complaint.
5. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 5 of the complaint.

6. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 6 of the complaint.
7. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 7 of the complaint.
8. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 8 of the complaint.
9. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 9 of the complaint.
10. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 10 of the complaint.
11. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 11 of the complaint.
12. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 12 of the complaint.
13. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 13 of the complaint.
14. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 14 of the complaint.
15. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 15 of the complaint.
16. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 16 of the complaint.

17. Denies each and every allegation contained in paragraph 17 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

18. Denies each and every allegation contained in paragraph 18 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

19. Denies each and every allegation contained in paragraph 19 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

20. Denies each and every allegation contained in paragraph 20 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

21. Denies each and every allegation contained in paragraph 21 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

22. Denies each and every allegation contained in paragraph 22 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related

and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

23. Denies each and every allegation contained in paragraph 23 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

24. Denies each and every allegation contained in paragraph 24 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

25. Denies each and every allegation contained in paragraph 25 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

26. Denies each and every allegation contained in paragraph 26 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

27. Denies each and every allegation contained in paragraph 27 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

28. Denies each and every allegation contained in paragraph 28 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

29. Denies each and every allegation contained in paragraph 29 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

30. Denies each and every allegation contained in paragraph 30 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

31. Denies each and every allegation contained in paragraph 31 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with VJB Construction 475 9<sup>th</sup> Avenue LLC, which entity on information and believe appears non-existent.

32. Denies each and every allegation contained in paragraph 32 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

33. Denies each and every allegation contained in paragraph 33 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

34. Denies each and every allegation contained in paragraph 34 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

35. Denies each and every allegation contained in paragraph 35 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

36. Denies each and every allegation contained in paragraph 36 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

37. Denies each and every allegation contained in paragraph 37 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

38. Denies each and every allegation contained in paragraph 38 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

39. Denies each and every allegation contained in paragraph 39 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

40. Denies each and every allegation contained in paragraph 40 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

41. Denies each and every allegation contained in paragraph 41 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

42. Denies each and every allegation contained in paragraph 42 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

43. Denies each and every allegation contained in paragraph 43 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

44. Denies each and every allegation contained in paragraph 44 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

45. Denies each and every allegation contained in paragraph 45 of the complaint and denies that VJB was involved in the project at 475 Ninth Avenue.

46. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 46 of the complaint.

47. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 47 of the complaint.

48. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 48 of the complaint.

49. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 49 of the complaint.

50. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 50 of the complaint.

51. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 51 of the complaint.

52. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 52 of the complaint.

53. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 53 of the complaint.

54. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 54 of the complaint.

55. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 55 of the complaint.

56. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 56 of the complaint.



57. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 57 of the complaint.

58. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 58 of the complaint.

59. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 59 of the complaint.

60. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 60 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima Development Corporation ("Kajima"), which entity on information and belief appears non-existent.

61. Denies each and every allegation contained in paragraph 61 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

62. Denies each and every allegation contained in paragraph 62 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

63. Denies each and every allegation contained in paragraph 63 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

64. Denies each and every allegation contained in paragraph 64 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

65. Denies each and every allegation contained in paragraph 65 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

66. Denies each and every allegation contained in paragraph 66 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

67. Denies each and every allegation contained in paragraph 67 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

68. Denies each and every allegation contained in paragraph 68 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

69. Denies each and every allegation contained in paragraph 69 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

70. Denies each and every allegation contained in paragraph 70 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

71. Denies each and every allegation contained in paragraph 71 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

72. Denies each and every allegation contained in paragraph 72 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

73. Denies each and every allegation contained in paragraph 73 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

74. Denies each and every allegation contained in paragraph 74 of the complaint and denies same to the extent that plaintiffs are alleging or attempting to allege that VJB is related and/or affiliated with Kajima, which entity on information and belief appears non-existent.

75. Denies each and every allegation contained in paragraph 75 of the complaint.

76. Denies each and every allegation contained in paragraph 76 of the complaint.

77. Denies each and every allegation contained in paragraph 77 of the complaint as to VJB.

78. Denies each and every allegation contained in paragraph 78 of the complaint as to VJB.

79. Denies each and every allegation contained in paragraph 79 of the complaint.

80. (a) - (r) Denies each and every allegation contained in paragraph 80 of the complaint as to VJB.

81. Denies each and every allegation contained in paragraph 81 of the complaint as to VJB Construction.

82. Denies each and every allegation contained in paragraph 82 of the complaint.

83. That the allegations pled in ¶1 to and including ¶82 are herein repeated, reiterated, realleged and incorporated by reference with the same force and effect as though fully repeated herein word-for-word at length.

84. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

85. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

86. Denies each and every allegation contained in paragraph 86 of the complaint as to VJB.

87. Denies each and every allegation contained in paragraph 87 of the complaint.

88. Denies each and every allegation contained in paragraph 88 of the complaint.

89. That the allegations pled in ¶1 to and including ¶88 are herein repeated, reiterated, realleged and incorporated by reference with the same force and effect as though fully repeated herein word-for-word at length.

90. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

91. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

92. Denies each and every allegation contained in paragraph 92 of the complaint.

93. Denies each and every allegation contained in paragraph 93 of the complaint.

94. Denies each and every allegation contained in paragraph 94 of the complaint.

95. That the allegations pled in ¶1 to and including ¶94 are herein repeated, reiterated, realleged and incorporated by reference with the same force and effect as though fully repeated herein word-for-word at length.

96. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

97. Said allegation is an inappropriate pleading allegation and is respectfully referred to the Court.

98. Denies each and every allegation contained in paragraph 98 of the complaint.

99. Denies each and every allegation contained in paragraph 99 of the complaint.

100. Denies each and every allegation contained in paragraph 100 of the complaint.

101. That the allegations pled in ¶1 to and including ¶100 are herein repeated, reiterated, realleged and incorporated by reference with the same force and effect as though fully repeated herein word-for-word at length

102. Denies each and every allegation contained in paragraph 102 of the complaint.

103. Denies each and every allegation contained in paragraph 103 of the complaint

104. Denies each and every allegation contained in paragraph 104 of the complaint.

AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE

105. That the complaint and each cause of action therein pled fails to state a cause of action

AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE

106. VJB was not a party to agreements, contracts and/or leases with respect to the property known as 475 Ninth Avenue.

107. VJB was not involved in construction work performed at 475 Ninth Avenue.

AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE

108. VJB Construction 475 9<sup>th</sup> Avenue LLC is not related to VJB Construction Corporation.

109. VJB Construction 475 9<sup>th</sup> Avenue LLC, on information and belief, is a non-existent entity with respect to the 475 Ninth Avenue construction project.

110. VJB Construction 475 9<sup>th</sup> Avenue LLC was not a party to any agreements, contracts and/or leases with respect to the property known as 475 Ninth Avenue.

AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE

111. Kajima Development Corporation, on information and belief, is a non-existent entity with respect to the 475 Ninth Avenue construction project.

112. Kajima Development Corporation is not related to VJB.

113. VJB did not enter into agreements, contracts and/or leases with Kajima Development Corporation with respect to the property known as 475 Ninth Avenue.

AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE

114. That damages alleged to have been sustained by plaintiff were caused in whole or part by the culpable conduct of plaintiff himself and/or others without any contributing and/or comparative fault or otherwise of or by VJB Construction.

115. VJB is entitled, therefore, to dismissal or reduction of any recovery that may be had by plaintiff in proportion to the culpable conduct attributable to the plaintiff and non-parties that bears upon the entire measure of responsibility for the occurrence.

AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE

116. Upon information and belief, any past and/or future damages, costs or expenses incurred or to be incurred by plaintiff has been or will be replaced or indemnified in whole or in part from collateral sources pursuant to, in accordance with and/or as defined in CPLR §4545.

117. If any recovery is awarded against VJB, the amount of such recovery shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral sources.

AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE

118. Pursuant to CPLR 1603, the limitations of CPLR 1601 and 1602 and all rights contained in Article 16 applicable provisions are preserved and incorporated herein as though fully set forth at length.

AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE

119. VJB denies liability for the occurrence and damages herein complained of; nevertheless, if VJB is found liable for such occurrence and/or damages, this answering defendant's share of liability is fifty percent (50%) or less of the total liability assigned to all persons or entities liable, and pursuant to CPLR Section 1601, the liability of VJB to the claimant for non-economic loss shall not exceed the equitable share of VJB determined in

accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

120. The instrumentality that allegedly injured the plaintiff was used, owned, operated, managed, controlled and/or supervised by plaintiff, his employer and/or others.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

121. The plaintiff voluntarily engaged in a dangerous activity and, in doing so, assumed the risks attendant thereto, and those risks were open, obvious and known.

**AS AND FOR AN ELEVENTH  
AFFIRMATIVE DEFENSE**

122. Any and all damages, including injuries, surgery, pain and/or suffering were caused in the entirety or in part by plaintiff's employer and/or others under the supervision, direction and/or control of plaintiff's employer.

**AS AND FOR A TWELFTH  
AFFIRMATIVE DEFENSE**

123. Plaintiff's employer and/or others, at all relevant times, owned, operated, maintained, serviced, supervised, directed and/or controlled equipment used in construction, demolition, renovation, alteration and repair work, labor and/or other services performed upon the premises alleged in the complaint and, accordingly, is responsible and liable for same.



AS AND FOR A THIRTEENTH  
AFFIRMATIVE DEFENSE

124. Plaintiff's employer and/or others, upon information and belief, were at all relevant times present at and in control of, managed, operated, responsible for and/or supervised the premises and, accordingly, is responsible and liable for any and all occurrences, activities, etc. of and/or relating to the herein complaint.

AS AND FOR A FOURTEENTH  
AFFIRMATIVE DEFENSE

125. That if plaintiff was caused to sustain damages by reason of the claims set forth in the complaint, all of which are denied, such damages were sustained by reason of the carelessness, negligence, recklessness, misconduct, omissions, misfeasance, nonfeasance, fault, breaches of duty, oversight, acts, commissions and/or conduct of the non-parties, i.e., R&J Construction and co-defendants, 475 Ninth Avenue Associates, LLC and Spieler & Ricca Electrical Corp., their agents, servants and/or employees and or others and not by VJB Construction, and if any judgment is recovered by plaintiff against VJB Construction, then VJB and Kajima will be unfairly and/or unjustly damaged thereby, and non-party employer, R&J Construction, co-defendants, 475 Ninth Avenue, LLC and Spieler & Ricca Electrical Corp. and/or others are or will be responsible therefore in whole or in part.

AS AN FOR A FIFTEENTH  
AFFIRMATIVE DEFENSE

126. The damages claimed by plaintiff, which are expressly denied, were not proximately caused by the defendant, VJB.

AS AND FOR A SIXTEENTH  
AFFIRMATIVE DEFENSE

127. That if plaintiff was caused to sustain personal injuries and resulting damages at the time and place set forth in the complaint and in the manner therein pled, through any fault, negligence, oversight, accident, omission, commission, carelessness, recklessness and/or breaches of duty, of warranty and/or of contract, other than of the plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty, obligations, warranty and/or contract in fact or implied in law, upon the part of the co-defendants with indemnification and save harmless agreement and/or responsibility by them in fact and/or implied in law and without any breaches or any fault or negligence of VJB contributing thereto; and if VJB is found liable as to the plaintiff for the injuries and damages as set breaches of duty and/or warranty and/or contract, other than of the plaintiff, then the said injuries and damages arose out of the several and joint carelessness, recklessness, acts, omissions, negligence and breaches of duty, obligations, warranties, statutes, contract implied in law and/or in fact, upon the part of the co-defendants and non-party employer, R&J Construction, with indemnification and save-harmless agreement(s) and/or responsibility by them in fact and/or implied in law and without any breaches or any negligence of VJB contributing thereto; and if the defendants are found liable to plaintiff, then in that event, the relative responsibilities of each and every party, all defendants and others responsible, in fairness, must be apportioned by a separate determination in view of the existing factual disparity and the said defendants herein and their responsibility will be liable over jointly and severally to the answering defendant and bound to fully indemnify and hold the answering defendant harmless for the full amount of any verdict or judgment that the plaintiff herein may recover

against the answering defendant in this action, including all costs of investigations, disbursements, expenses and attorneys' fees incurred in the defense and in the conduct of these affirmative defenses

128 To the extent that VJB is liable to any and/or all parties, VJB is entitled to contribution.

129 To the extent that VJB is liable to any and/or all parties, VJB is entitled to indemnification.

AS AND FOR A FIRST  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

130 By Agreement entitled "Subcontract," dated January 9, 2002, Spieler agreed to maintain CGL insurance, naming VJB as additional insured.

131 By Agreement, dated January 9, 2002, Spieler agreed to maintain CGL insurance to defend and indemnify VJB relating to the project known as 475 9<sup>th</sup> Avenue (the "Project").

132 By Agreement, dated January 9, 2002, Spieler agreed to furnish Certificates of Insurance

133 By Agreement, dated January 9, 2002, Spieler agreed to furnish Certificates of insurance certifying that Spieler had maintained insurance to defend VJB.

134 Spieler furnished Certificates of Insurance to VJB.

135 By Agreement, dated January 9, 2002, Spieler agreed to furnish Certificates of insurance certifying that Spieler had maintained insurance to indemnify VJB relating to the Project

136 Spieler agreed to maintain CGL insurance.

137 Spieler agreed to maintain CGL insurance as follows.

*Exhibit B*

*Subcontractor's Insurance Requirements*

*Subcontractor [Spieler] shall maintain during the progress of the Work, and any extended warranty period as required by the Contract Documents or by law, insurance with the minimum limits and coverage as shown below or, if higher, the requirements set forth in the Agreement between the Owner and the Contractor. The insurance coverage and limits that are required in this Exhibit shall not limit the subcontractor's liability in any way.*

- 138. Spieler maintained CGL insurance
- 139. Spieler maintained CGL insurance, naming VJB as an additional insured.
- 140. Spieler maintained CGL insurance, naming VJB as a named insured
- 141. Spieler maintained CGL insurance, naming VJB as a named additional insured.
- 142. Spieler maintained CGL insurance, listing VJB as an additional insured.
- 143. Spieler maintained CGL insurance, listing VJB as a named insured.
- 144. Spieler maintained CGL insurance, listing VJB as a named additional insured.
- 145. Spieler maintained CGL insurance during the progress of the work.
- 146. Spieler maintained CGL insurance during the extended warranty period.
- 147. Spieler agreed to defend VJB with respect to the herein lawsuit.
- 148. Spieler defended VJB with respect to the herein lawsuit.
- 149. Spieler is currently defending VJB with respect to the herein lawsuit.
- 150. Spieler agreed to indemnify VJB with respect to the herein lawsuit.
- 151. Spieler indemnified VJB with respect to the herein lawsuit.
- 152. Spieler agreed to defend VJB with respect to the herein lawsuit as follows

*16. Indemnification: To the fullest extent permitted by law, the subcontractor hereby agrees to indemnify the Construction Manager/...against and hold each of them harmless from, any pay the full amount of all Loss-And-Expense, whenever asserted or occurring, which any Indemnitee may suffer, incur or pay out, or which may*

*be asserted against any Indemnitee in whole or in part, by reason of, or in connection with, the following:*

*(a) any bodily injury...occurring in connection with, or arising out of, or resulting from, acts or omissions of the Subcontractor...or their respective employees or its breach of its obligations under this Agreement*

153. Spieler is defending VJB with respect to the herein lawsuit to the fullest extent permitted by the law.

154. Spieler is not defending VJB with respect to the herein lawsuit.

155. Spieler is holding VJB harmless from any loss-and-expense which any indemnitee has suffered.

156. Spieler agreed to indemnify VJB with respect to the herein lawsuit as follows:

*16. Indemnification: To the fullest extent permitted by law, the subcontractor hereby agrees to indemnify the Construction Manager]...against and hold each of them harmless from, any pay the full amount of all Loss-And-Expense, whenever asserted or occurring, which any Indemnitee may suffer, incur or pay out, or which may be asserted against any Indemnitee in whole or in part, by reason of, or in connection with, the following:*

*(a) any bodily injury...occurring in connection with, or arising out of, or resulting from, acts or omissions of the Subcontractor...or their respective employees or its breach of its obligations under this Agreement*

157. Spieler indemnified VJB with respect to the herein lawsuit to the fullest extent permitted by law.

158. Spieler presented VJB with a Certificate of Liability Insurance, dated May 14, 2007.

159. The Certificate of Liability Insurance represented that Spieler had purchased policy number CPP3113891.

160. Spieler purchased CGL policy number CPP3113891.

161. The Certificate of Liability Insurance represented that Spieler had maintained CGL policy number CPP3113891.

162. Spieler maintained CGL policy number CPP3113891.

163. The Certificate of Liability Insurance represented that Spieler had purchased CGL insurance from Utica National of Texas ("Utica").

164. The Certificate of Liability Insurance represented that Spieler had maintained CGL insurance from Utica.

165. Spieler maintained CGL insurance from Utica.

166. The Certificate of Liability Insurance represented that Spieler had purchased and maintained CGL insurance with effective dates January 1, 2003 through January 1, 2004.

167. Spieler maintained CGL insurance with effective dates January 1, 2003 through January 1, 2004.

168. The Certificate of Liability Insurance represented that Spieler had purchased and maintained CGL insurance with effective dates January 1, 2003 through January 1, 2004 from Utica.

169. Spieler maintained CGL insurance from Utica with effective dates January 1, 2003 through January 1, 2004.

170. Spieler represented to VJB that the Certificate of Liability Insurance was true and accurate.

171. Spieler did not state to VJB that the Certificate of Liability Insurance was incorrect.

172. CGL insurance policy number CPP3113891 names VJB as a named insured.

173. Utica's CGL insurance policy number CPP3113891 names VJB as a named insured.

174. CGL insurance policy number CPP3113891 names VJB as a named additional insured.

175. Utica's CGL insurance policy number CPP3113891 names VJB as a named additional insured.

176. CGL insurance policy number CPP3113891 names VJB as an additional insured.

177. Utica's CGL insurance policy number CPP3113891 names VJB as an additional insured.

178. Spieler's CGL carrier, Utica, is providing a defense for Spieler.

179. Spieler's attorneys' fees are being paid by Spieler's CGL carrier, Utica.

180. VJB demanded that Spieler provide a defense for VJB in this action.

181. VJB demanded that Spieler indemnify VJB in this action.

182. VJB tendered its defense in this lawsuit to Spieler.

183. VJB tendered its indemnity in this lawsuit to Spieler.

184. VJB is incurring fees and expenses in defending this lawsuit.

185. VJB is incurring attorneys' fees and expenses in seeking to compel Spieler to provide a defense for VJB.

186. VJB is incurring attorneys' fees and expenses in seeking to compel Spieler to indemnify VJB.

187. VJB is incurring attorneys' fees and expenses in seeking to compel Spieler to provide a defense for VJB pursuant to the January 9, 2002 Agreement.

188 VJB is incurring attorneys' fees and expenses in seeking to compel Spieler to indemnify VJB pursuant to the January 9, 2002 Agreement.

189 VJB notified Spieler's carrier, Utica, to defend VJB.

190 VJB notified Spieler's carrier, Utica, to indemnify VJB

191 VJB is a named insured of Utica.

192 VJB is a named additional insured of Utica.

193 VJB is an additional insured of Utica.

194 Utica's CGL Policy number CPP3113891 insures VJB.

195 Utica's CGL Policy number CPP3113891 insures VJB of and/or relating to the instant lawsuit, including providing a defense for VJB with respect to this lawsuit.

196 Utica's CGL Policy number CPP3113891 insures VJB of and/or relating to the instant lawsuit, including indemnifying VJB.

197 Utica is contractually bound and obligated to insure, including defend, VJB.

198 Utica is contractually bound and obligated to insure, including indemnify.

199 Utica issued Policy number CPP3113891.

200 Utica issued Policy number CPP3113891 with the policy period of January 1, 2003 through January 1, 2004

201 Utica issued Policy number CPP3113891 to Spieler.

202 VJB is a named insured under Utica Policy number CPP3113891.

203 VJB is a named additional insured under Utica Policy number CPP3113891.

204 VJB is an additional insured under Utica Policy number CPP3113891.

205 Utica breached its contract to insure, including defend VJB of and/or relating to the instant lawsuit.



206. Accordingly, VJB is entitled to damages as a result of Utica's breach.

AS AND FOR A SECOND  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

207 That the allegations pled in ¶130 to and including ¶206 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word

208 Utica breached its contract to insure, including indemnify VJB of and/or relating to the instant lawsuit

209 Accordingly, VJB is entitled to damages as a result of Utica's breach.

AS AND FOR A THIRD  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

210 That the allegations pled in ¶130 to and including ¶209 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

211 VJB is entitled to damages as a result of Utica's breach of contract, including attorneys' fees and expenses, together with interest

AS AND FOR A FOURTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

212 That the allegations pled in ¶130 to and including ¶211 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word

213 VJB is entitled to a declaratory judgment against Utica to defend VJB of and/or relating to the instant lawsuit.

AS AND FOR A FIFTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

214 That the allegations pled in ¶130 to and including ¶213 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

215 VJB is entitled to a declaratory judgment against Utica to indemnify VJB of and/or relating to the instant lawsuit.

AS AND FOR A SIXTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

216 That the allegations pled in ¶130 to and including ¶215 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

217 Accordingly, Spieler is required to purchase and maintain CGL insurance on behalf of VJB to defend and indemnify VJB.

218 Accordingly, VJB is entitled to a declaratory judgment ordering Spieler to purchase and maintain CGL insurance to defend/indemnify VJB from the plaintiff's complaint.

AS AND FOR A SEVENTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

219. That the allegations pled in ¶130 to and including ¶218 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

220. Spieler failed to purchase and maintain CGL insurance on behalf of VJB.

221. Spieler breached its contract to purchase and maintain CGL insurance on behalf of VJB.

222. Accordingly, VJB is entitled to damages, including attorneys' fees and costs.

AS AND FOR A EIGHTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

223. That the allegations pled in ¶130 to and including ¶222 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

224. Accordingly, Spieler agreed to defend and hold-harmless VJB.

225. Accordingly, Spieler is required to defend and hold-harmless VJB.

226. Accordingly, VJB is entitled a declaratory judgment against Spieler, ordering Spieler to defend and hold-harmless VJB against the plaintiff's complaint.

AS AND FOR A NINTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

227. That the allegations pled in ¶130 to and including ¶226 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

228. Accordingly, Spieler's CGL insurance policy is required to defend and indemnify VJB as a named insured, additional insured and/or named additional insured.

229. Accordingly, VJB is entitled to a declaratory judgment against Spieler's insurance company, Utica, ordering them, by and through their policy no. CPP3113891, to defend and indemnify VJB as a named insured, additional insured and/or named additional insured.

AS AND FOR A TENTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

230. That the allegations pled in ¶130 to and including ¶229 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.

231. Accordingly, Spieler is required to notify its respective insurer CGL carrier of the herein claims and of VJB's tender and/or demand for Spieler to defend and indemnify VJB, and in the absence of having done so, Spieler is liable and obligated to pay all damages, attorneys' fees and costs.

AS AND FOR A ELEVENTH  
CROSS-CLAIM AGAINST  
SPIELER ELECTRICAL

232. That the allegations pled in ¶130 to and including ¶231 are herein repeated, reiterated, realleged and incorporated by referenced with the same force and effect as though fully set forth herein at length word-for-word.


233. Accordingly, VJB is entitled to a declaratory judgment ordering Spieler to reimburse VJB for the attorneys' fees and expenses incurred to date and continuing to be incurred in defending VJB and seeking to compel Spieler to honor and abide by its agreement.

dated January 9, 2002, and obtain defense/indemnity under Spielers Policy No. CPP3113891 with Utica.

234. VJB, pursuant to and in accordance with CPLR §3011, demands Spielers to answer the cross-claims.

WHEREFORE, the defendant, VJB CONSTRUCTION CORP., demands judgment dismissing the plaintiffs' complaint on the merits; and if the plaintiffs, GEORGE SANTOLI and STACEY SANTOLI are found to have contributed to the accident or damages, that any damages be reduced in proportion to which the plaintiffs may be found to have so contributed to the accident or damages together with the costs, disbursements and expenses of this action including attorneys' fees

Dated: March 23, 2004  
New York, New York

  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GEORGE SANTOLI and STACEY SANTOLI,

plaintiffs,

Index No.: 118596/03

- against -

475 NINTH AVENUE ASSOCIATES, LLC,  
VJB CONSTRUCTION 475 9TH AVENUE LLC,  
VJB CONSTRUCTION CORP., SPIELER & RICCA  
ELECTRICAL CO. INC. and KAJIMA DEVELOPMENT  
CORPORATION,

defendants.

-----X  
VJB CONSTRUCTION CORP.; LIBERTY INTERNATIONAL  
UNDERWRITERS a/s/o VJB CONSTRUCTION CORP.,

TP Index No.:

third-party-plaintiffs,

-against-

R&J CONSTRUCTION CORP.; TRAVELERS INDEMNITY  
COMPANY; TRAVELERS INDEMNITY COMPANY OF  
AMERICA; TRAVELERS INDEMNITY COMPANY OF  
CONNECTICUT; REPUBLIC FRANKLIN INSURANCE  
COMPANY; UTICA NATIONAL INSURANCE COMPANY  
OF TEXAS; UTICA NATIONAL INSURANCE GROUP;  
UTICA MUTUAL INSURANCE COMPANY; REGIONAL  
SCAFFOLDING and HOISTING CO., INC.,

third-party-defendants.

-----X

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SUMMONS and VERIFIED THIRD PARTY COMPLAINT

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